

TESTIMONY OF JOHN F. STURM, PRESIDENT AND CEO OF NAA
TELECOMMUNICATIONS AND THE INTERNET SUBCOMMITTEE, HOUSE
OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

December 5, 2007

EXECUTIVE SUMMARY

- FCC action to relax the decades-old newspaper/broadcast cross-ownership ban is egregiously overdue and is supported by a colossal evidentiary record. Few, if any, issues have been examined more thoroughly by the FCC in recent history.
- Given the remarkably one-sided record before the Commission demonstrating that the current ban is counterproductive to the interests of newspaper publishers, broadcasters, and local communities alike, the Chairman's recent proposal will provide only a modicum of the regulatory relief that would be fully justified in the agency's proceeding.
- By any reasonable measure, today's media world bears little resemblance to that which informed the FCC's decision to impose the ban in 1975. As a consequence of the growing fragmentation in the media marketplace, there has been an undeniable decline in the prominence and economic performance of local daily newspapers and broadcasters. Since the cross-ownership ban was adopted in 1975, several hundred daily newspapers have ceased publishing altogether, newspaper circulation has been on a downward slide, and advertising revenue has taken a substantial hit. The broadcast industry is facing similar challenges, especially in smaller markets.
- Until the FCC levels the regulatory playing field between traditional daily newspapers, broadcasters, and their growing list of competitors, it will continue to inflict unnecessary economic injury on the nation's traditional media. As a result, the agency needlessly will detract from newspapers' and broadcasters' ability to remain efficient, vital, and competitive in today's media marketplace—and thus their capacity to continue informing and serving their local communities to the best of their abilities.
- Removing the cross-ownership restriction would serve, and not harm, local communities. In all the volumes of evidence that have been accumulated on this issue, there is none that credibly shows that newspaper/broadcast cross-ownership is detrimental to the public interest. To the contrary, the record repeatedly and indisputably has demonstrated that cross-ownership enhances localism by enabling broadcasters to increase local news and does not detract from the diversity of viewpoints available to local audiences.

TESTIMONY OF JOHN F. STURM
PRESIDENT AND CHIEF EXECUTIVE OFFICER,
NEWSPAPER ASSOCIATION OF AMERICA

Before the

**TELECOMMUNICATIONS AND THE INTERNET SUBCOMMITTEE,
HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND
COMMERCE**

December 5, 2007

Good morning/afternoon. I am John Sturm, the President and CEO of the Newspaper Association of America. I am very pleased to have the opportunity to appear before this Subcommittee today to discuss the FCC's current review of its absolute ban on newspaper/broadcast cross-ownership in local markets. While defenders of the status quo have characterized the FCC Chairman's plan to move forward in this proceeding in the near future as a "rush to judgment," the facts show that such action is, in reality, woefully overdue. Further, in light of the remarkably one-sided record before the Commission demonstrating that the current ban is counterproductive to the interests of newspaper publishers, broadcasters, and local communities alike, the Chairman's recent proposal will provide only a modicum of the regulatory relief that would be fully justified in the agency's proceeding.

**I. FCC ACTION TO RELAX THE DECADES-OLD NEWSPAPER/
BROADCAST CROSS-OWNERSHIP BAN IS EGREGIOUSLY OVERDUE
AND IS SUPPORTED BY A COLOSSAL EVIDENTIARY RECORD.**

Before commenting on the substance of the Chairman's recently announced proposal to modify the newspaper/broadcast ban, it is important to place the timing and context of the FCC's current media ownership proceeding in proper perspective. The flat restriction on the cross-ownership of a daily newspaper and a TV or radio station within

the same local market now has been in existence for 32 years. More than a decade ago, the FCC began questioning the utility of the ban and recognized the need to reformulate it. Since that time, the agency has conducted a series of interrelated proceedings with the goal of relaxing the absolute restriction. Indeed, the media ownership proceeding currently underway at the Commission represents the *sixth* that the FCC has conducted in the past 11 years to consider the continuing validity of the 1975 rule.

None of these proceedings, however, has resulted in any actual changes to the absolute ban. In fact, most of these proceedings were not completed at all. Instead, they were rolled into subsequent rulemakings, creating a seemingly endless cycle of regulatory uncertainty for the affected newspaper and broadcast industries. Thus, although the Commission repeatedly has recognized that the flat cross-ownership restriction is no longer needed and in reality is inimical to some of the agency's central public interest goals, the rule has remained stubbornly in place.

As a result, the prohibition now stands alone among the series of broadcast ownership regulations that were enacted by the Commission in the 1960s and 1970s. Each of those rules has been relaxed by the agency on at least one occasion. For example, since 1999, broadcasters have been permitted to own two TV stations in many markets. In 1996, Congress determined that a single party should be permitted to own as many as eight radio stations in large markets. By contrast, new newspaper/broadcast combinations are strictly prohibited in all markets.

During the course of the agency's protracted reconsideration of the newspaper ban, the FCC has amassed a mammoth record on the impact of cross-ownership. Based on clear, convincing, and consistent evidence that a blanket restriction is not necessary to

protect either competition or diversity and is detrimental to localism, the FCC decided in 2003 to replace it with a set of more flexible—though still measured—cross-media limits. That decision, as the agency explained, was based on the “most comprehensive” record ever gathered on the issue of newspaper/broadcast cross-ownership. Prior to issuing its 2003 decision, the Commission received and analyzed many thousands of pages of information from a wide range of interested parties, including the full gamut of industry representatives, many public interest organizations, and an unusually large number of private citizens. The agency supplemented this massive amount of information by commissioning 12 media ownership working group empirical studies and conducting a series of localism hearings around the country.

As everyone who has followed this issue is acutely aware, the agency’s 2003 attempt to adopt the cross-media limits never went into effect. Instead, it was reversed and remanded by the U.S. Court of Appeals for the Third Circuit. It is imperative, however, for those interested in the outcome of these proceedings not to lose sight of the scope of that remand decision. Even in directing the agency to reconsider the new cross-media limits, the Third Circuit expressly found that “*reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.*”

As part of the periodic review mandate imposed on the Commission with respect to its broadcast ownership rules in the Telecommunications Act of 1996, Congress directed the agency to “repeal or modify any regulation that it determines to be no longer in the public interest.” Because the Third Circuit confirmed that the blanket cross-ownership ban falls into this category, the FCC is under an express directive to abandon

the restriction in order to satisfy the demands of the 1996 Act. Thus, its specific task in the current proceeding is to decide how to respond to the Third Circuit's objections to the calibrated restrictions the agency proposed in 2003.

In order to respond to the court's concerns and to fulfill its quadrennial review obligation under the 1996 Act, the FCC once again is in the midst of updating the already voluminous record it has accumulated with respect to this issue. More than 18 months ago, the Commission again requested input from interested parties. The resulting comment period spanned six months and generated thousands of pages of additional evidence from a wide variety of industry representatives, consumer interest groups, and individual consumers. Furthermore, the FCC commissioned ten empirical studies from academics and other economic experts, the release of which this past summer triggered yet another round of extensive public comment. Overall, more than 160,000 comments already have been filed in the latest round of these proceedings. To build on this gigantic record even further, the Commission also has held six field hearings on media ownership and two hearings on broadcast localism over the past several months. Overall, the FCC took testimony from more than 100 expert witnesses at these hearings as well as the statements of multitudes of concerned citizens.

In sum, few, if any, issues have been examined more thoroughly by the FCC in recent history. While the gathering of additional public input and other information will remain a theoretical possibility far into the indefinite future, the Commission must move forward at some point to finally bring these proceedings to a close. On behalf of the NAA, I submit that the time for such action is long overdue. By any reasonable measure, the agency now has before it far more than enough evidence to eliminate or, at the very

least, modify the outdated ban. Further, nearly three and one-half years have passed since the Third Circuit remanded the FCC's most recent cross-ownership decision, a delay that already has imposed significant regulatory costs on the affected industries during a period that any realistic observer would describe as a "challenging" time to be in the newspaper or broadcast business. In light of these considerations, the FCC Chairman's proposal to issue a decision in this proceeding in the coming weeks is entirely reasonable. If nothing else, this action finally may bring a small measure of regulatory certainty to newspaper publishers and broadcasters, many of whom now have been waiting for more than a decade for the fate of this rule to be resolved.

II. THE PROPOSED MODIFICATION TO THE FLAT CROSS-OWNERSHIP BAN WOULD PROVIDE ONLY MODEST, AND MUCH-NEEDED, REGULATORY RELIEF TO NEWSPAPER PUBLISHERS AND BROADCASTERS.

Since the Chairman released his proposal to modify the blanket newspaper/broadcast cross-ownership ban several weeks ago, opponents of deregulation predictably have sent out alarm bells that the revised rule would lead to wave upon wave of consolidation. According to these parties, local media marketplaces would be left in an almost unrecognizable state, devoid of diverse local news and information, if this proposal comes to fruition. But a close look at the suggested changes to the rule reveals that the reality is quite different. In fact, the Chairman's proposal would give newspaper publishers and broadcasters only modest regulatory relief in an intensely competitive environment.

Given that the FCC now is *obligated* under the 1996 Act and the Third Circuit's holding to relax the blanket cross-ownership restriction, the suggested changes are about as limited as possibly could be expected. Indeed, in light of the revolutionary changes

that have taken hold of the media marketplace in recent years as well as the unequivocal evidence that restrictions on cross-ownership disserve (and certainly are not needed to protect) the public interest, NAA strongly believes that far more extensive deregulation is called for and would be fully justified.

The limited changes to the rule suggested by Chairman Martin would create relatively few and modest opportunities for new media combinations. Out of the 210 Designated Market Areas (DMAs) that exist in this country, the Chairman's current proposal would permit cross-ownership only in the 20 largest. Even in these markets, the new rule would create only a "presumption" in favor of cross-ownership, meaning that opponents would have an opportunity to make the case that a given combination should be precluded. To qualify for such a presumption, moreover, newspaper publishers could own, at most, only one TV station *or* one radio station—but not both. In this respect, the new rule would be considerably more limited than the current TV/radio cross-ownership rule, pursuant to which one entity can own up to two full-power TV stations and as many as six or seven radio stations within the same market. What is more, daily newspapers would be prohibited from owning same-market TV stations that are ranked among the top four in their markets based on audience share. While it is true that the proposal includes a waiver standard for combinations that do not meet the strict criteria for a presumption in favor of cross-ownership, the possibility of waivers is nothing new—the FCC always has the capacity to waive its rules when the public interest would be served as a result.

Further, the Chairman's proposed rule would provide no assurance of relief from the ban in medium-sized and smaller markets. In many markets of this size, broadcast news is becoming a scarcer commodity as the cost of producing news escalates, media

choices increase, and audiences get smaller. Thus, the proposed rule does nothing to enhance the quantity or quality of local news on television and radio in precisely the markets that need help the most. In addition, the proposed rule could lead to the divestiture of co-owned properties that have been created in the past decade through acquisitions—a result that is clearly unwarranted and will result in less local news, not more, for the public.

The proposed changes to the newspaper rule appear even more modest when viewed against the backdrop of the vast changes in the media marketplace since the ban first was put in place. By any reasonable measure, today's media world bears little resemblance to that which informed the FCC's decision to impose the ban in 1975. Back then, consumers had access to a local daily newspaper and, at best, a handful of television and radio stations. The original "Big Three" television networks brought us the only national newscasts, cable television was in its infancy, and the Internet, wi-fi, cell phones, DBS, satellite radio, and iPods were not even visible on the distant horizon.

By contrast, consumers today can turn to all of these choices and a growing chorus of others for news, information, and entertainment at any given time and on virtually any imaginable topic. Choices have expanded for local news, just as they have for nearly any other content category. In particular, the endless capacity of the Internet has proven to be a particularly rich breeding ground for hyper-local blogs and websites, which often cover news and information that may be too narrowly focused to be addressed by mainstream media. Thus, as consumers turn to an ever broader variety of media to get full diets of news and information, the decades-old notion that newspapers

and broadcasters serve as the exclusive “gatekeepers” to local viewpoints has become antiquated and increasingly detached from reality.

As a consequence of the growing fragmentation in the media marketplace, there has been an undeniable decline in the prominence and economic performance of local daily newspapers. Since the cross-ownership ban was adopted in 1975, at least 300 daily newspapers have ceased publishing altogether. Newspaper circulation has been on a downward slide for 20 years. In the past six months alone, it declined 2.6 percent. Not surprisingly, advertising revenue—which accounts for 75 to 80 percent of average newspaper earnings—also has taken a substantial hit. For example, newspaper advertising revenue decreased by more than nine percent in May 2007 compared to May 2006, a drop that Goldman Sachs recently described as “extraordinary in terms of the scale of the decline and the scope of the challenges it represents.” As a result of this statistic and similar data, Goldman Sachs concluded in a recent report that “the magnitude of the recent declines [in newspaper ad revenue] is extraordinary for a non-recession period and provides concrete evidence, in our view, that the share shift from print to online in the publishing industry is accelerating.”

The broadcast industry is facing similar challenges, especially in smaller markets. The transition to digital television has been expensive for all television stations, and has not been any less so in smaller markets. Likewise, cutbacks in network compensation have been particularly deep for smaller-market stations. At the same time, small-market broadcasters must borrow funds and seek investors in the same capital and money markets as large-market owners who have more resources to leverage and pledge. As the

FCC media ownership rulemaking languishes at the agency, the trends in the newspaper and broadcast industries have become increasingly troubling.

Thus, while the opponents of deregulation continually make the nonsensical claim that any modification of the cross-ownership ban would spell the end of democracy as we know it, there are realistic and urgent concerns that need to be addressed with respect to the rule. Until the FCC levels the regulatory playing field between traditional daily newspapers, broadcasters, and their growing list of competitors, it will continue to inflict unnecessary economic injury on the nation's traditional media. As a result, the agency needlessly will detract from newspapers' and broadcasters' ability to remain efficient, vital, and competitive in today's media marketplace and thus to continue informing and serving their local communities to the best of their abilities. In particular, unless and until these media are permitted to operate in a more efficient manner by shedding regulations designed for a bygone era, they may have little choice but to begin cutting back on some of their most important—but costly—services, including in-depth investigative reporting.

III. REMOVING THE CROSS-OWNERSHIP RESTRICTION WOULD SERVE, AND NOT HARM, LOCAL COMMUNITIES.

Perhaps most fundamentally, in all the volumes of evidence that have been accumulated on this issue, there is none that credibly shows that newspaper/broadcast cross-ownership is detrimental to the public interest. To the contrary, the record repeatedly and indisputably has demonstrated that cross-ownership enhances localism. This is because broadcast stations that are jointly owned with a co-located daily newspaper offer local audiences superior national and local news coverage. This has been proven time and again through the real-world experiences of existing

newspaper/broadcast combinations as well as through numerous empirical and academic studies. For example, notwithstanding the efforts of some deregulatory opponents to mask the results, this reality was confirmed once again by no fewer than five of the empirical studies released by the Commission just this past summer. Given the extensive newsgathering resources and journalistic traditions of daily newspapers, it makes perfect sense that this would be the case.

Working together, newspaper and broadcast staffs can overcome the financial obstacles that both industries have faced in recent years and continue to deliver quality journalism. Notwithstanding the economic challenges confronting the newspaper industry, dailies that are part of newspaper/broadcast combinations have remained especially well-equipped to continue providing exceptional local service. This has proven especially true in medium and small-sized markets. In many such communities, cross-ownership has helped to stem losses in newspaper circulation.

At the same time, combination owners have continued to increase local broadcast news and information. For instance, in four of the smaller markets where Media General, Inc., a proponent of cross-ownership, operates combined properties, the weekly television news output of its stations has grown by between 30 minutes and seven and one-half hours since the combinations were created. Contrary to general media industry trends, these TV stations have increased their newsroom staffs in order to bring this enhanced news programming to local communities. In fact, Media General has increased the overall TV staff numbers in the majority of its cross-ownership markets.

Similar trends also are apparent in larger markets. By way of example, in Atlanta, the country's ninth largest market, the newspaper/radio/television combination owned

and operated by Cox Enterprises, Inc. consistently has offered more local news and public affairs programming than its peers. WSB-TV now airs seven more hours of news programming than its closest competitor, and it is currently the only television station in the market to feature a weekly community affairs show and editorials during its Sunday evening newscast. Similarly, *The Atlanta Journal-Constitution* features additional daily local coverage, including local community zoned editions of the paper.

As these and many other combination owners repeatedly have demonstrated, cross-ownership enables media properties to “tag-team” on local administrative and political proceedings. Among other benefits, such collaboration has ensured gavel-to-gavel coverage for small-town residents who otherwise would not receive such thorough reports. Newspaper/broadcast combinations also are better able to cover developments in the “far corners” of sparsely populated rural markets, ensuring comprehensive regional coverage. By joining forces, co-owned newspaper and broadcast outlets also have produced serious investigative journalism pieces that otherwise would not have been feasible. Such benefits are particularly pronounced in the area of election coverage. Cross-owned properties consistently are the leaders in their markets in holding candidate debates and town hall forums. On election nights, the pooled resources of both outlets are able to bring more results to more residents more quickly and present more in-depth reports on them.

In addition, it is well-established that cross-ownership is not harmful to local viewpoint diversity. Rather, as many existing combination owners have shown through their own practices, same-market outlets tend to make editorial decisions on an individual basis and have strong incentives to offer divergent viewpoints on different platforms.

This experiential evidence has been soundly confirmed by recent empirical evidence: one of the studies released in the ownership proceeding over the summer unambiguously found that cross-owned broadcast stations and daily newspapers are no more likely to share viewpoints than any other same-market media outlets. Previous studies on this topic consistently have reached analogous conclusions. Finally, it is now widely recognized that restrictions on newspaper/broadcast cross-ownership are not needed to protect competition. The FCC concluded in 2003, and the Third Circuit affirmed, that newspaper publishers and broadcasters simply do not compete directly for advertising revenue.

Given the clear benefits and lack of harms stemming from cross-ownership, undoing existing combinations through forced divestitures clearly would be a public interest loss. Notably, the FCC's peer-reviewed studies and numerous other record studies regarding news produced on cross-owned TV stations offer no reason to distinguish by market size in granting relief from the current ban. In addition, the proposed waiver standard may be extremely difficult to meet in smaller markets, both for existing combinations and potential new ones. The uncertainties inherent in case-by-case evaluations also will make acquisitions extremely difficult. Most TV deals are today accomplished through brokers' auctions, and sellers undoubtedly will be reluctant to consider deals with buyers that bring the prospect of lengthy waiver litigation at the FCC.

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Chairman Markey, Vice Chairman Doyle, and Members of the Committee, the evidence shows that the time has long since passed for the FCC to change the decades old ban on newspaper cross-ownership and that consumers will be the beneficiaries of such

action. On behalf of the NAA, I respectfully request that Congress allow the agency to move forward on this important issue as expeditiously as possible.

Again, the NAA appreciates this opportunity to share its views with you, and I look forward to answering any questions you may have.

Thank you.